

### **REMARKS**

This responds to the Office Action mailed on May 8, 2007.

Claims 1, 3, 9, 11-12 and 17-24 are amended, no claims are canceled or added in this response; as a result, claims 1-24 remain pending in this application.

### **Information Disclosure Statement**

The objection regarding the IDS is noted. However, the seven US patent applications mentioned by the Examiner (10643742, 10643484, 10235898, 6922766, 10643769, 10643754 and 10643758) are assigned in common with and were filed on the same date as the present application, and were listed in a Communication Concerning Related Applications for the Examiner's information.

### **Specification**

The following informalities have been corrected as requested:

- The missing serial numbers of the co-pending applications on page 1 of the specification have been inserted.
- The example reference numbers 120 on p. 5, lines 2 and 4 have been replaced with example reference numbers that appear in the drawings.
- Replacement drawings showing reference number 200 are provided with this response.
- The trademarks have been amended to such that they are now capitalized.

In view of the amendments and replacement drawings noted above, Applicant respectfully requests removal of the objection to the disclosure.

Double Patenting Rejection

Claims 1-24 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-21 of co-pending Application No. 10/643,769 and in view of Gillespie (US 6,269,391). Applicant does not admit that the claims are not patentably distinct from the cited application and patent, and further does not admit that the motivations for the modifications suggested in the Office Action are proper motivations. However, Applicant will consider filing a terminal disclaimer when all other issues regarding the patentability of the claims has been resolved.

§101 Rejection of the Claims

Claims 17-24 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Office Action stated that “computer readable media can be any media including radio-link or wave which are not statutory.”

The Office Action appears to be following the guidance provided in “Interim Guidelines for Examination for Patent Applications for Patentable Subject Matter Eligibility” Annex IV, Published in OG 22 Nov. 2005. Applicant respectfully disagrees with the Interim Guidelines to the extent that the Interim Guidelines indicate that a signal is not statutory subject matter and notes that the Interim Guidelines do not have the force of law. Applicant further agrees with the Interim Guidelines where it is stated:

On the other hand, from a technological standpoint, a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal.

However, in order to expedite prosecution, Applicant has amended claims 17-24 such that the claims now recite a “tangible computer-readable media.” Applicant reserves the right to re-introduce claims directed to signal bearing media in a continuation application. Applicant submits that claims 17-24 as amended are directed to statutory subject matter. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 17-24.

§112 Rejection of the Claims

Claims 9 and 12 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. Applicant has amended claims 9 and 12 consistent to be consistent with the interpretation of the claims provided in the Office Action. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 9 and 12.

§102 and §103 Rejection of the Claims

Claims 1-3, 5-11 and 13-24 were rejected under 35 U.S.C. § 102(b) for anticipation by Gillespie (US 6,269,391). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully submits that a *prima facie* case of anticipation does not exist, because the claims contain elements not found in Gillespie.

For example, independent claim 1 recites “upon the occurrence of a context shifting event for a first program unit of the plurality of program units, synchronizing the scheduling of each of the plurality of program units and setting the context of each of the plurality of program units such that the program units process the same context shifting event as the first program unit.” Independent claims 9 and 17 recite similar language. The Office Action states that Gillespie, at column 3, lines 45-53 discloses “Setting the context of each of the plurality of program units to process the context shift event.” Applicant respectfully disagrees with this interpretation of Gillespie. Gillespie does disclose the use of thread control objects to as data used to specify the context of a thread. Gillespie further discloses that two threads are involved in a context switch, a thread referred to as a falling thread and a thread referred to as a rising thread. However, Gillespie does not disclose that the context of the threads are set such that each of threads process the same context shifting event, that is, the event that caused the context switch for one

of the threads in the group of threads associated with a process. In other words, Gillespie does not disclose setting the context for a group of threads associated with a process such that each of the associated threads process the same context event when one of the threads receives a context shifting event. As a result, Gillespie fails to disclose each and every element of Applicant's claims 1, 9 and 17. Therefore Gillespie does not anticipate claims 1, 9 and 17. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 9 and 17.

Claims 2-3 and 5-8 depend from claim 1, claims 10-11 and 13-16 depend from claim 9 and claims 18-24 depend from claim 17. These dependent claims inherit the elements of the respective base claims and are therefore not anticipated by Gillespie for at least the reasons discussed above regarding claims 1, 9 and 17. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 2-3, 5-8, 10-11, 13-16 and 18-24.

Claims 4, 12 and 20 were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gillespie and Penello (US 7,162,713). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that claims 4, 12 and 20 are neither anticipated by Gillespie, nor are the claims obvious in view of the combination of Gillespie and Penello because neither Gillespie nor Penello teach or suggest each and every element of claims 4, 12 and 20.

Claims 4, 12 and 20 depend from claims 1, 9 and 17 respectively, and therefore each of claims 4, 12 and 20 inherits all of the elements recited in their respective base claims, including the element of "upon the occurrence of a context shifting event\_for a first program unit of the plurality of program units, synchronizing the scheduling of each of the plurality of program units and setting the context of each of the plurality of program units such that the program units

process the same context shifting event as the first program unit.” As discussed above, Gillespie fails to teach the recited language. Further, Applicant’s representative has reviewed Penello, and can find no teaching or suggestion of the recited language. As a result, neither Gillespie nor Penello, alone or in combination, teaches or suggests each of the elements (including inherited elements) of claims 4, 12 and 20. Therefore claims 4, 12 and 20 are neither anticipated by Gillespie nor or claims 4, 12 and 20 obvious in view of the combination of Gillespie and Penello. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 4, 12 and 20.

### **RESERVATION OF RIGHTS**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant’s silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

PETER M. KLAUSLER

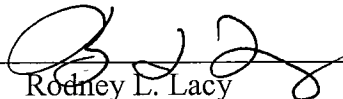
By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6954

Date

August 13, 2007

By



Rodney L. Lacy

Reg. No. 41,136

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 13 day of August 2007.

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